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Into Centuries of Centuries: Reflections on Marc R. Poirier (1952–2015)

John A. Lovett*

Marc Poirier was an innovative scholar, a fantastic mentor and teacher, and last, but certainly not least, a great friend to many, many members of the property law community. I am not sure when I first met Marc because it seems as if I have known him since my very first days as a law professor. Our first meeting must have occurred at one of the annual breakfast meetings of the Property Law Section of the American Association of Law Schools (AALS). In his booming, confident voice and with his warm smile, Marc would have stood up from the table and talked about his recent work and invited everyone to join him for another event at the annual meeting, perhaps a SALT support group, a meditation session, or an environmental law field trip. At the rest of the meeting, Marc would have been omnipresent. He would be the first person to stand up and praise panelists' presentations and then the first to ask a probing question.

In May 2015, Marc and I travelled to the ALPS conference at the University of Georgia Law School in Athens, Georgia. We rented a car together at the Atlanta airport and then drove, along with ALPS colleague Sally Richardson, to Athens. Marc and I spent a lot of time together at that conference. We enjoyed meals together with friends,

* De Van D. Daggett, Jr. Distinguished Professor, Loyola University New Orleans College of Law. I wish to thank Tim Mulvaney and Linda E. Fisher for their comments and contributions to this essay, Ngai Pindell and Marc Roark for helping to organize and providing illuminating papers at our panel discussion of Marc Poirier's scholarship at 2016 ALPS meeting in Belfast, N.I. and finally Ben Barros and Robin Hickey for their institutional support and leadership at ALPS in helping all of us honor Marc Poirier.

talked about our professional and personal lives and then returned to Atlanta together. When I said goodbye to Marc in the airport, I fully expected to see him at another property law conference in the coming year, perhaps at the next ALPS conference in Belfast, Northern Ireland. After the conference, we traded email, exchanging news about summer travels and thoughts about the upcoming Presidential campaign. On July 13, Marc sent me an update that he had posted on Caring Bridge. In typical fashion, he relayed the details of his most recent medical diagnosis without complaint and talked about other news, such as the house repairs he was undertaking, but with no hint of the gravity of his medical situation.

My relationship with Marc was not unique. Indeed, it is striking how many U.S. property law scholars I have met have told me that Marc was a close friend. He had a remarkable capacity – because of his generous spirit, his keen intellect and his irrepressible *joie de vivre* – to make everyone want to be his friend. It is because of that friendship and our deep respect for his work as a scholar, teacher and mentor that this volume of the *Journal of Law, Property and Society* is dedicated to Marc R. Poirier.

* * *

Marc grew up in Durham, North Carolina. His father was a chemistry professor at Duke University and his mother was a lab technician, first at Duke and then at Burroughs-Wellcome Facility in Research Triangle Park. At the age of 14, Marc left North Carolina to attend the Phillips Academy in Andover, Massachusetts, a lucky break, he once told me, because he had outgrown the local school system in Durham. He graduated from Andover in 1970 and undertook his undergraduate education at Yale University, where he majored in Literature and wrote his honors thesis on Martin

Heidegger's approach to poetry. After graduating from Yale magna cum laude in 1974, Marc next took a job in Paris, France, working for a French oil pipeline engineering company. After a year in Paris, Marc returned to the United States and entered Harvard Law School in 1975.

Marc's sojourn at Harvard Law School was not an easy one. As Marc wrote in his now classic autobiographical reflection,¹ neither he nor Harvard were prepared for the other. Although Critical Legal Studies was just then beginning to change legal scholarship and wider societal transformations were beginning to reshape all of American legal education, Harvard Law School was, as an institution, surprisingly impervious to all of this change. As Marc recalled, although the student body had started to become more diverse, Harvard's faculty was then almost entirely white, almost entirely male and devoid of any openly gay professors. Most of the teaching took place in large classes, and competition among law students for grades and status was intense. Students were largely expected to teach themselves practical skills like legal writing.²

Although he was dissatisfied with Harvard's complacency, Marc responded in his typically proactive manner. To make life tolerable and stimulating, Marc discovered and developed friendlier, more nurturing social networks both within and outside the walls of the law school. Along with gay and lesbian students from other Boston area law schools, Marc helped form an anti-sexism reading group under the aegis of the National Lawyers Guild. Working in this group, Marc began to study feminist legal theory, an intellectual

¹ Marc R. Poirier, *One L in a Different Voice: Becoming a Gay Male Feminist at Harvard Law School*, 78 U. MO. K.C. L REV. 1063, 1064 (2010).

² *Id.* at 1064, 1066-67. According to Marc, "there really were cases ripped out of the reporters." *Id.* at 1066.

foundation that would inform much of his future scholarship.³ Marc was active with other projects of the National Lawyers Guild throughout his time at Harvard, including doing field work on a case involving Native American land claims,⁴ and supervising alternative moot court problems designed to produce useful work for the local bar.⁵ He also served as an articles editor for the *Harvard International Law Journal*, an experience he described as beneficial.⁶

After graduating in 1978, Marc moved to Washington, D.C. to practice law with the firm of Spiegel and McDiarmid, where he specialized in the licensing of hydro-electric projects and other regulatory matters for municipally owned power companies. This was an important period for Marc. Not only did he practice for much longer than the typical U.S. legal academic, which gave him deep respect for the value of teaching practical skills, it was here that Marc developed his interest in environmental law, administrative law and land use. In fact, Marc twice served as the chair of the Hydroelectric Regulation section of the Energy Bar Association while in practice.

Marc was also lucky in his choice of law firms. Spiegel and McDiarmid, was, in Marc's words, "incredibly gay friendly," as one of its founding partners had two gay sons.⁷ In his first year at the firm, Marc worked on logistics of the 1979 National Gay and Lesbian March on Washington and, by chance, met several friends and classmates from Harvard, who were now, like him, "openly and politically gay."⁸

³ *Id.* at 1067.

⁴ *Mashpee Tribe v. Town of Mashpee*, 447 F. Supp. 940 (D. Mass. 1978), *aff'd*, 592 F.2d 575 (1st Cir. 1979).

⁵ Poirier, *supra* note 1, at 1068.

⁶ *Id.*

⁷ *Id.* at 1073.

⁸ *Id.*

After 12 years with the law firm, however, Marc was ready for a change. In 1990, he returned to New Haven, this time to pursue an LLM from Yale Law School. Here, he formed his life-long friendship with Carol Rose, who served as an important role model for Marc not only because of the brilliance of her scholarship but because of the way that Rose refused to let her scholarship be pigeonholed in any single theoretical or political camp.⁹ The next year, in 1991, Marc joined the faculty at Seton Hall Law School in Newark, New Jersey. Marc soon became a fixture at Seton Hall. He earned tenure in 1996, was promoted to full Professor in 1998, and became a Martha Traylor Research Fellow in 2007.

At Seton Hall, Marc was an enormously popular teacher and deeply respected member of the faculty. He took on numerous roles at Seton Hall. He was the advisor to the Lambda Law Alliance and the Environmental Law Society. He led meditation and mindfulness sessions for anyone who was interested. He supervised innumerable student notes, comments and papers. He taught many different courses, including Property, Environmental Law, Administrative Law, First Amendment Survey, and Law and Sexuality. In his last year at Seton Hall, Marc even volunteered to teach the basic course in Lawyering and Legal Writing and embraced it with an enthusiasm that few senior law professors would muster.

One of Marc's most ambitious teaching projects was a field course he organized and led for several years for his Seton Hall law students during winter break in New Orleans. The course was focused on the legal, social and environmental impact of the Deepwater Horizon Oil Spill. Marc took his Seton Hall students all across Southeast Louisiana. He and his students met scientists, plaintiff and

⁹ I thank Tim Mulvaney for this insight.

defense lawyers, journalists and community activists, and the fishermen and coastal residents whose livelihoods were most immediately affected by the disaster. In his typical fashion, Marc became quite at ease in New Orleans and knitted many people together during these visits, at the same time that he maintained a critical perspective on the legal issues that he and his students were studying.

Marc gained wide recognition in U.S. property law circles through his active involvement in many professional organizations, his mentorship of so many other property law scholars, and through his remarkably broad range of publications. Marc was a passionate member of the Society of American Law Teachers (SALT), serving on its board of directors for many years. He also chaired at different times both the Property Section and Environmental Law Section of the AALS. As Tim Mulvaney recounted at the annual meeting of ALPS in Belfast, Northern Ireland in May 2016, Marc was an exceptional mentor. If a new scholar sent Marc a draft article, Marc would always respond with carefully composed comments and encouraging words.

Marc's own scholarship itself is so deep and so broad, it is difficult to summarize. He wrote on topics as diverse as land-titling in

Brazil,¹⁰ same-sex marriage (in numerous thoughtful and provocative articles),¹¹ public spaces and public art,¹² environmental and natural resource law,¹³ NAFTA,¹⁴ regulatory takings,¹⁵ statutory interpretation,¹⁶ gender identity¹⁷ and gender stereotypes in the

¹⁰ Marc R. Poirier, *Brazilian Regularization of Title in Light of Moradia, Compared to United States Understandings of Homelessness and Homeownership*, 44 U. MIAMI INTER-AMERICAN L. REV. 259 (2013).

¹¹ Marc R. Poirier, *"Whiffs of Federalism" in Windsor v. United States: Power, Localism, and Kulturkampf*, 85 COLO. L. REV. (2014); Marc R. Poirier, *Name Calling: Identifying Stigma and the "Civil Union" / "Marriage" Distinction*, 41 CONN. L. REV. 1425 (2009); Marc R. Poirier, *Gender, Place, Discursive Space: Where is Same-Sex Marriage?*, 3 FLORIDA INT'L U. L. REV. 307 (2008); Marc R. Poirier, *Microperformances of Identity: Visible Same Sex Couples and the Marriage Controversy*, 15 WASH. & LEE J. CIV. RTS. & SOC. JUST. 3 (2008); Marc R. Poirier, *Same-Sex Marriage, Identity Processes and the Kulturkampf: Why Federalism is Not the Main Event*, 17 TEMPLE POL. & CIV. RTS. L. REV. 387 (2008); Marc R. Poirier, *The Cultural Property Claim Within the Same Sex Marriage Controversy*, 17 COLUMBIA J. GENDER & L. 343 (2008); Marc R. Poirier, *Piece-meal and Wholesale Approaches Towards Marriage Equality in New Jersey: Is Lewis v. Harris a Dead End or Just a Detour*, 59 RUTGERS L. REV. (2007).

¹² Marc R. Poirier, *Essay, Place, Space and Territory as Frontiers for LGBTQ Scholarship*, 19 LAW & SEXUALITY 108 (2010); Marc R. Poirier, *A Very Clear Blue Line: Behavioral Economics, Public Choice, Public Art and Sea Level Rise*, 16 SE. ENVTL. L.J. 83 (2007).

¹³ Marc R. Poirier & Tony MacDonald, *Regional Ocean Governance Symposium: Legal and Policy Solutions for the Mid-Atlantic Ocean – Introduction to the Special Issue*, 6(1) SEA GRANT L. & POL'Y J. 1 (2013); Marc R. Poirier, *Natural Resources, Congestion and the Feminist Future: Aspects of Frischman's Theory of Infrastructure*, 35 ECOLOGY L.Q. 179 (2008); Marc R. Poirier, *Environmental Justice/Racism/Equity: Can We Talk?*, 96 W. VA. L. REV. 1083 (1994).

¹⁴ Marc R. Poirier, *The NAFTA Chapter 11 Expropriation Debate Through the Eyes of a Property Theorist*, 35 ENVTL. L. 851 (2003).

¹⁵ Marc R. Poirier, *The Virtue of Vagueness in Takings Doctrine*, 24 CARDOZO L. REV. 93 (2002); Marc R. Poirier, *Takings and Natural Hazards Policy: Public Choice on the Beachfront*, 46 RUTGERS L. REV. 243 (1993).

¹⁶ Marc R. Poirier, *On Whose Authority?: Linguist's Claims of Expertise to Interpret Statutes*, 73 WASH. U. L.Q. 1025 (1995).

¹⁷ Marc R. Poirier, *Hastening the Kulturkampf: Boy Scouts of America v. Dale and the Politics of American Masculinity*, 12 LAW & SEXUALITY 271 (2003).

workplace¹⁸— anything that was interesting but not yet fully understood.

Other contributors to this volume will offer detailed insights into Marc's scholarship. As I reflect on the entire body of Marc's work, however, several overarching characteristics stand out. First, Marc was always generous in acknowledging and building on the work of colleagues. He was not a scholar who sought to tear down others' contributions. Rather, he tried to assess other scholars' work fairly, discover what was useful and original, give credit where it was due, and then weave together all of what he had learned into a fabric of his own. In a word, Marc's scholarship was truly syncretic. It sought to combine or fuse together different forms of belief or practice and different intellectual forms.

Another striking feature of Marc's scholarship, and perhaps this is just a different way of explaining the previous observation, is the degree to which Marc always sought to make connections in his own scholarship. He tried to show how different fields of legal studies and different disciplines of social thought could inform one another. Geography could inform property law and gender studies.¹⁹ Behavioral economics, public art and feminist theory could inform environmental law.²⁰ Cognitive theory and social change theory could inform regulatory takings law.²¹ Property theory and environmental

¹⁸ Marc R. Poirier, *Gender Stereotypes at Work*, 65 BROOKLYN L. REV. 1073 (1999).

¹⁹ Marc R. Poirier, *Essay, Place, Space and Territory as Frontiers for LGBTQ Scholarship*, 19 LAW & SEXUALITY 108 (2010); Marc R. Poirier, *Gender, Place, Discursive Space: Where is Same-Sex Marriage?*, 3 FLORIDA INT'L U. L. REV. 307 (2008).

²⁰ Marc R. Poirier, *A Very Clear Blue Line: Behavioral Economics, Public Choice, Public Art and Sea Level Rise*, 16 SE. ENVTL. L.J. 83 (2007); Marc R. Poirier, *Natural Resources, Congestion and the Feminist Future: Aspects of Frischman's Theory of Infrastructure*, 35 ECOLOGY L.Q. 179, 198-202 (2008).

²¹ Marc R. Poirier, *The Virtue of Vagueness in Takings Doctrine*, 24 CARDOZO L. REV. 93 (2002).

law theory could inform debates about same-sex marriage.²² More than almost any scholar working in property law, Marc's work was truly interdisciplinary. In any single piece, Marc could make significant advances in several different fields at once. He never stopped looking for underappreciated connections between different categories of law, between different ways of thinking and between different people.

Where did this drive for connectedness come from? Linda Fisher offered one explanation at our recent Belfast meeting:

Marc Poirier, my closest colleague and friend for twenty years at Seton Hall, was a deeply committed Zen Buddhist for over thirty years. His meditation practice and Buddhist worldview not only made him the wonderful soul that he was, they greatly affected his scholarly approach as well. One can review almost any of his published articles and find evidence of this. His most-cited piece, *The Virtue of Vagueness in Takings Doctrine* (2002),²³ provides an apt example. As the title suggests, Marc celebrated the intractable ambiguity of the doctrine, relying on a "dialogic conception of the law" that involves repeatedly renegotiated meanings. He points out that these negotiations can help create a civic community. These points are deeply Buddhist in the emphasis on our interconnectedness and the inevitability of change.²⁴

As Linda Fisher's comment suggests, Marc was always thinking simultaneously about the past, the present *and* the future. His scholarship was informed by the work of other scholars. It took into account contemporary developments in courts and legislatures. But it

²² Marc. R. Poirier, *The Cultural Property Claim Within the Same Sex Marriage Controversy*, 17 COLUMBIA J. GENDER & L. 343 (2008).

²³ Marc R. Poirier, *The Virtue of Vagueness in Takings Doctrine*, 24 CARDOZO L. REV. 93 (2002).

²⁴ Email correspondence with Linda E. Fisher.

was always charting the work that lay ahead. Marc was, as Linda Fisher suggests, ever conscious of change. Because of that consciousness, he always looked for the new intellectual and legal challenges that lay ahead. He posed the hardest questions, even if he did not yet have all the answers.

I badly want to quote some of Marc's work to remind our readers of his intellectual virtuosity, the poetry of his prose, the sharpness of his insight, but it is difficult to choose just one example. Reading through many of his articles in preparing this brief essay, I stumbled across this paragraph from his 2005 essay in the *Ecology Law Quarterly*, exploring the impact of a colleague's Economic Theory of Infrastructure,²⁵ and it struck me as a perfect, but hardly unique, example of the way Marc's mind worked:

There is much to be explored here. Suppose we tinker with Frischman's theory, replacing information and innovation as the iterated but uncertain downstream benefit with the care of others, one generation to the next. That care must be facilitated by a fundamental infrastructure of natural resources and the environmental services they provide. Care is productive and fruitful, like information, and it generates further fruitful, uncertain, and unexpected downstream positives. Surprisingly, then, Frischmann's theory, for all its welfare economics, points us towards human rights as capabilities, and towards a certain strand of feminist theories of rights (including environmental rights) as facilitating human care, in *saecula, saeuclorum*.²⁶

²⁵ Brett M. Frischmann, *An Economic Theory of Infrastructure and Commons Management*, 89 MINN. L. REV. 917 (2005).

²⁶ Marc R. Poirier, *Natural Resources, Congestion and the Feminist Future: Aspects of Frischman's Theory of Infrastructure*, 35 ECOLOGY L.Q. 179, 202 (2008).

Here, we see Marc's intellectual practice at work. He takes another person's idea, measures it and questions it, and ultimately uses it in a new context to open up new vistas for further inquiry. And notice the integration of economics, feminist theory, progressive property theory, all merging into a vision of "human care," exactly what Marc practiced in his daily life. Marc only adorned this paragraph with a single footnote to explain the concluding Latin phrase. That footnote itself was also typically evocative and poetic:

Forever and ever. I choose this Latin expression not so much for its religious overtones as because its literal translation is "into centuries of centuries" and it captures the iterative quality of the future.²⁷

One of Marc's favorite subjects (and places) was the beach. He was keenly interested in how we regulate building on beaches, how we protect the ecological services they provide, and how we guarantee public access to them.²⁸ As Tim Mulvaney reminded me recently, Marc loved beaches not only because of the sand and the waves, but because of how they brought people together "to play, marry, and meditate, without a care in the world, except human care." I will remember Marc not just as a scholar and a great teacher and mentor, but also as a fully sentient human being, walking on a sandy beach at sunset on the New Jersey shore, talking with a friend, contemplating the sea, perhaps reciting a poem or just musing on the words from his article . . . in *saecula, saeuclorum*.

²⁷ *Id.* at 202. n.129.

²⁸ Marc R. Poirier, *A Very Clear Blue Line: Behavioral Economics, Public Choice, Public Art and Sea Level Rise*, 16 SE. ENVTL. L.J. 83 (2007); Marc R. Poirier, *Takings and Natural Hazards Policy: Public Choice on the Beachfront*, 46 RUTGERS L. REV. 243 (1993); Marc R. Poirier, *Modified Private Property: New Jersey's Public Trust Doctrine, Private Development and Exclusion, and Shared Public Uses of Natural Resources*, 15 SE. ENVTL. L.J. 71 (2006).